TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 428.

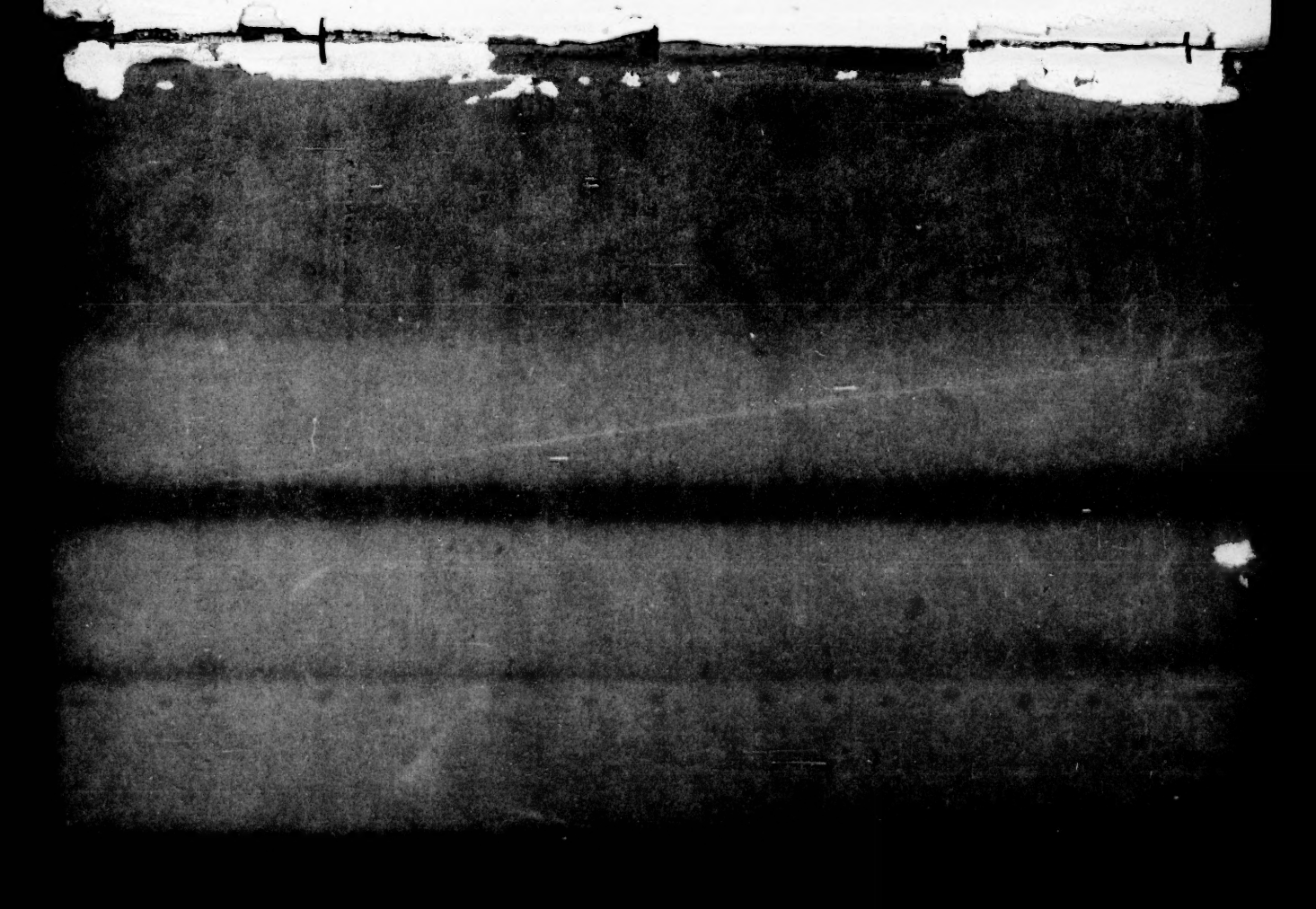
VERNON K. STEVENSON, PLAINTIFF IN ERROR,

vs.

MARY McDOUGALL WILLIAMS, WIFE OF WILLIAM VON PHUL, AND WILLIAM VON PHUL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 1, 1872.



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1 *Petition of intervention of Vernon K. Stevenson, Joseph S. Cassot, and Nathan King Knox.—Filed December 29th, 1868.*

To the honorable judge of the second district court for the parish of Orleans:

The petition of Vernon K. Stevenson, who resides in the city of New York, and of Joseph A. Cassot, who resides in France, and of Nathan K. Knox, who resides at Baton Rouge, in the State of Louisiana, "respectfully shews unto your honor"—

That the succession of Alfred A Williams which has been opened in this honorable court, and is represented by Nolan S. Williams, dative testamentary executor, is justly and truly indebted unto your petitioners, respectively, in the sums and manner following, to wit:

Unto your petitioner, Vernon K. Stevenson, in the sum of seventy-four thousand dollars, with interests and costs as fixed and established by judgment of this honorable court, No. 25978 of the docket.

Unto your petitioner, Joseph Cassot, in the sum of nine thousand and five hundred and four dollars and eighty-one cents, with interests
2 at the rate of eight per cent. per annum, from the third day of March, 1867, being for a promissory note for said sum, drawn by the said Alfred A. Williams to the order of said Joseph A. Cassot, dated at Baton Rouge, March 3rd, 1859, bearing interest at the rate of eight per cent. per annum from date, on which the interest up to the 3rd of March, 1867, has been paid by the testamentary executor of said Alfred A. Williams, which note is now due, with interest as aforesaid, exisible and unpaid, and is the property of petitioner.

And unto your petitioner, Nathan King Knox, in the sum of ten thousand six hundred and one dollars and seventy-eight cents, with interest at the rate of eight per cent. per annum, from the nineteenth day of April, 1865, less twenty-five hundred dollars paid on the 1st January, 1867, being for a promissory note for eight thousand four hundred and seventy dollars, drawn by A. Kames and Alfred A. Williams, in solido, to the order of petitioner, and by him endorsed in blank, dated at Baton Rouge, Louisiana, June 27th, 1859, payable twelve months after date, bearing interest at the rate of eight per cent. per annum, from maturity, which said note was held by Abraham Bird's succession, upon which note the interest was paid in the life-time of said Alfred A. Williams, up to the 28th February, 1862; and on the 19th day of April, 1865, your petitioner, payee and endorser, paid to the holder, the
3 representative of the succession of said Abraham Bird, the amount of said note and interest up to that date, the sum of ten thousand six hundred and one dollars and seventy-eight cents, whereby the petitioner became the holder and owner of said note; and afterwards, viz, on the 1st day of January, 1867, James McCalop Williams, the testamentary executor of said Alfred A. Williams, paid to petitioner the sum of twenty-five hundred dollars on account thereof, which is endorsed as a credit on said note, and that the entire balance, with interest as aforesaid, is now due and owing, exisible, and unpaid, as will appear by reference to said note, herewith filed as part of this petition.

Now petitioners shew, that Mary McDougald Stewart Williams, wife of William Von Phul, of the city of New Orleans, daughter of said Alfred A. Williams, joined, aided, and assisted by her said husband, has lately brought suit in this honorable court, No. 32339 of the docket, against her brother, the said Nolan Stewart Williams, dative testamentary executor of said Alfred A. Williams, father of said Mary and Nolan, in which she claims and demands a very large sum as due her,

with tacit mortgage on the entire property of the said deceased, her father.

That, should her said claim and demand be allowed, it will absorb the entire estate of said decedent, and leave nothing for your petitioners, creditors of said succession.

4 That petitioners have no wish to interpose any obstacle to the just demands of said Mary, but they believe and do charge the fact to be, that the amount claimed and demanded by her is greatly in excess of her legal rights, and they desire to become parties to this proceeding, in order that the same demand might be liquidated and fixed contradictorily with them, and in accordance with the law and the proofs which may be administered in the cause.

Petitioners show, that they have no knowledge of the donations which may have been made to the father and mother of plaintiff, or either of them, either before or during the marriage, but if any donations were made to them both during the marriage, such donations entered into and formed part of the community.

That of such property as may at any time have been donated to the mother, and fell under the administration of their said father, her husband, the rents and profits belonged also to the community, and neither rent nor hire was ever due by said Alfred A. Williams to his said wife for the same.

That during the marriage the said Alfred A. Williams bought and acquired much property, principally slaves, stock, and farming utensils, and expended large sums in the erection of buildings and in machinery for the proper cultivation of cane and the manufacture of sugar,

5 and in bringing into cultivation lands which were covered with a heavy growth of timber. That in annual visits to the North and West with his family, and in the improvement of the property, and the purchase of slaves, stocks, and farming utensils, machinery, etc., and in the maintenance of the family, and the numerous expenses incidents to the business of planting, the earnings of the community were all expended, and at the time of the death of Mrs. Williams the community was represented by the property acquired during the marriage, on account of which, as petitioners are informed and believe, and so charge the fact to be, there remained large sums unpaid, which were afterwards paid out of the proceeds of crops made by said Williams.

Petitioners shew that the said Mrs. Williams died intestate, and that her said husband had by law the usufruct of the *usufruct of the* entire property in the community, which was inherited by her children, and that he was in no manner whatever answerable to said children for any part of the revenues or profits of said community, property, or rights, after the death of his said wife, the same being his absolutely, as legal usufructuary.

That petitioners have no means of knowing the amount which may justly be due to plaintiff, but, as they are informed, verily believe, and so charge the fact to be, that by far the greater part of the slaves, stocks, implements, and machinery on hand at the death of Mrs. Williams, belonged to the community, that much of this property

6 must have been consumed, or worn out, or have perished from natural causes, without fault on the part of said usufructuary, during his usufruct, and that at the time of his death there would have remained but little of said property, save except the slaves, and that the greater part of the stock, implements, etc., on hand at the time of his death, were his seperate property, purchased by him from time to time as the exigencies of his planting operations required.

That as to the removal to Texas it was with the hope of saving the property, which would have been lost if it had remained on the plantations in the vicinity of Baton Rouge, and that no responsibility attaches for the failure of the deceased to save the crops which were standing at the time of the removal to Texas.

Wherefore, the premises considered, petitioners pray leave to file this as an intervention and third opposition in the said cause.

That the said Mary McDougald Williams, wife of William Von Phul, be authorized by the court to appear and defend the same; that she and her said husband, William Von Phul, be duly cited to answer.

That the said Nolan Stewart Williams, dative testamentary executor of said Alfred A. Williams, be also cited to answer.

7 That, after due proceedings, he be condemned, in his said capacity, to pay, in due course of administration, unto petitioners, respectively and seperately, the sums of money by them separately and respectively above claimed, and costs of suit.

And that the said Mrs. Von Phul, be required to establish, by positive proof, taken contradictorily with petitioners, the amount of her claim, against the succession of her said father, and that her rights be restricted and limited to the amount which the proofs may shew that she is legally entitled to recover.

Petitioners pray for all such further and general relief in the premises as the facts will warrant and justice may require; and as in duty bound, etc.

(Signed) HAYS AND NEW, *for Stevenson.*
" RAND H. MAN, *for Knox.*
" J. L. TISSOT, *for Cassot.*

Order on foregoing intervention.

Let this intervention be filed.
New Orleans, December 29th, 1869.
(Signed) LOUIS DUVIGNEAUD, *Judge.*

8 *Citation to Vernon K. Stevenson.*

MARY MCD. WILLIAMS, WIFE OF W'M VON PHUL, *vs.* SUCCESSION OF A. A. WILLIAMS. } No. 32339.

State of Louisiana, second district court for the parish of Orleans, in the city of New Orleans, opposite Jackson's square.

To Vernon H. Stevenson, who resides in the city of New York, and intervenor herein.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the second district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable Louis Duvigneaud, judge of the second district court, this 25th day of January, A. D. 1869.

(Signed) M. O. TRACY, *Clerk.*

Sheriff's return on foregoing citation.

9 Received, January 28th, 1869, and, on the 29th day of the same month and year, served copy of the within citation and accom-

panying petition on Vernon K. Stevenson, through Hays and New, attorneys, by personal service on New, esq'r.
Returned same day.
(Signed) A. T. LYND, *Dep'y Sheriff.*

DOCUMENT B 2.—*Being testimony of H. W. Conner, taken by consent, in the matter of Stevenson vs. Williams.—Filed in evidence in behalf of administrator, March 10th,* 1869.

STEVENSON vs. WILLIAMS. } Testimony of H. W. Conner.

I know the plaintiff. He gave me checks on banks, and drafts, and some money—but how much I do not know—which he told me to invest for him when I collected.
The money given to me was confederate notes. There was nothing used at the time but confederate money. I received checks on the banks for the money which he left with me, and those checks were deposited to the credit of H. W. Conner & Co.
10 Stevenson must have been aware that the only circulation here was confederate currency at the time he gave me the claims for collection. I invested $60,000 in purchasing from Payne, Huntington & Co. endorsements of A. A. Williams' notes, and gave the notes so purchased from P., H. and Co. to V. K. Stevenson. Stevenson, the plaintiff, was a citizen of Nashville, Tenn., at the time of the purchase of these notes, and am almost sure he was in the city at the time; bought the paper 21st March, 1862.
Nashville fell about November, 1861.
(Signed) H. W. CONNER.

Testimony taken by consent. Jurat waived.
(Signed) HAYS AND NEW.

DOCUMENT D 2.—*Offered in note of evidence filed March 12th,* 1869. *Filed in evidence on behalf of dative testamentary executor, March 12th,* 1869.

V. K. STEVENSON
vs.
JAMES MCCALOP WILLIAMS, TESTAMENTARY executor.

11 Second district court New Orleans.

Received of James McCalop Williams, executor, three thousand five hundred dollars ($3,500) on account of judgment rendered in above-entitled cause, with the understanding that the balance due on said judgment, sixty-five thousand five hundred dollars, ($65,500,) shall be payable in 2, 3, 4, 5, and 6 years from the date of said judgment, with interest payable annually, and at the rate of eight per cent. per annum.
$3,500.
New Orleans, January 11th, 1866.
(Signed) HAYS AND ADAMS,
Att'ys for Plaintiff.

DOCUMENT E 2.—*Offered in note of evidence filed March 12th, 1869.—Filed in evidence on behalf of dative testamentary executor, March, 12th, 1869.*

V. K. STEVENSON
vs.
JAMES MCCALOP WILLIAMS, EXECUTOR. } No. 32339.

District court New Orleans.

12 Whereas judgment is expected to be rendered herein in favor of plaintiff for seventy-four thousand dollars, with interest and costs: Now, this witnesseth, that for a valuable consideration received on account thereof, it is understood and agreed:

That said judgment shall be collected only to the extent of sixty-nine thousand dollars, the balance of said judgment being hereby remitted and extinguished.

The said sum or judgment for sixty-nine thousand dollars to be payable as follows: $3,500 cash, balance in 2, 3, 4, 5, and 6 years, with interest payable annually from and after the date of this judgment, and at the rate of eight per cent. per annum.

New Orleans, November 28th, A. D. 1863.

(Signed) HAYS AND ADAMS,
Attorneys and Agents of Vernon K. Stevenson.

DOCUMENT H 2.—*Offered in note of evidence filed March 12th, 1869.—Filed in evidence on behalf of dative testamentary executor, March 12th, 1869.*

13 MRS. MARY MCDOUGALD WILLIAMS, wife of William Von Phul,
vs.
NOLAN STEWART WILLIAMS, EXECUTOR, AND Thomas K. Stevenson and others, intervenors. } No. 32339. Second district court.

J. W. Payne, for Mrs. Von Phul and Nolan Stewart Williams, says that he has examined and countersigned a paper which is a copy of certain notes made by A. A. Williams. The more particular description of these notes will be seen by examining the copies of the same in said paper.

It will be seen that there were twelve notes of five thousand dollars each, payable in three years, and three notes of forty-eight hundred dollars, payable in one, two, and three years.

These notes were given, twelve of them for the principal, and the three, payable in one, two, and three years, were for interest for a loan of sixty thousand dollars, made by Messrs. Conner & Co., of this city, for some other party.

The sixty thousand dollars were paid by check on the bank of Orleans. Although the amount was paid in check, I know that the transaction was for confederate money, and that the negotiation was consum'ated for confederate money.

14 My firm negotiated this loan for A. A. Williams, and whilst I cannot recall the particularly of any conversation with reference to confederate currency, yet the negotiation was for it.

(Signed) J. W. PAYNE.

I have read the within, and confirm the statement of J. W. Payne. I have the most distinct recollection of the conversation with W'm Conner, at the time the loan was negotiated, and that it was in confederate money that the loan was made.

(Signed) G. W. HUNTINGTON.

March 12th, 1869.

Testimony taken by consent, and all forms in taking the same waived.

(Signed) HAYS AND NEW,
Atty's for Stevenson.

DOCUMENT J².—*Offered in note of evidence filed March 12th, 1869.—Testimony of A. Wheless, filed in evidence on behalf of dative testamentary executor, March 12th, 1869.*

NEW ORLEANS, *March 6th*, 1869.

I have known Vernon K. Stevenson since 1853. He resided in Nashville, Tennessee. He kept house there and called it his home.
15 His next residence was in New York City, where he now resides.

(Signed) A. WHELESS.

No objection to admission as evidence.

(Signed) HAYS AND NEW,
For Stevenson.

DOCUMENT K².—*Offered in note of evidence filed March 12th, 1869.—Testimony of W. W. Perkins, filed in evidence on behalf of dative testamentary executor, March 12th, 1869.*

[Perkins, Swenson and Co., No. 48 Carondelet st., corner of Union st.]

NEW ORLEANS, *March 9th*, 1869.

I have known Mr. V. K. Stevenson for about twenty-nine or thirty years. He was a merchant of Nashville, Tennessee, and afterwards president of a railroad company, residing in that city from 1839 until during the war, say in the early part of 1862, when I lost trace of him, until last year, 1858.

He was then, and I believe he still is, a resident of that city, and engaged in business there.

(Signed) W. M. PERKINS.

16 No objection to the in'duction of this testimony.

(Signed) HAYS AND NEW,
Atty's for Stevenson.

DOCUMENT L².—*Offered in note of evidence filed March 12th, 1869.—Testimony of W. A. Johnson, filed in evidence on behalf of dative testamentary executor. Filed March 12th, 1869.*

W'M M. RANDOLPH, Esq.

DEAR SIR: I have known Colonel V. K. Stevenson for 18 or 20 years. He resided in Nashville, Tenn., from my earliest acquaintance with him, and until that city (Nashville) was captured by the Federal Army, which occurred about the middle of February, 1862.

From February, 1862, to the close of the war, I understand that

Colonel Stephenson was in the South, and afterwards located in the city of New York, where he now resides.

Very respectfully,
(Signed) W. A. JOHNSON.

NEW ORLEANS, *March 8th*, 1869.

Consent that this testimony be received.
(Signed) HAYS AND ADAMS,
Atty's for Stevenson.

17 *Petition.—In the suit of Nolan Stewart Williams and Mary McDougald Williams, wife of William Von Phul, vs. Vernon K. Stevenson.—No.* 28805.—*Offered in note of evidence filed March 12th*, 1869 —*Filed March* 21, 1869.

In the second district court of New Orleans.—No. 28805.

To the honorable the judge of the second district court of New Orleans:

Your petitioners, Mary McDougald Stewart Williams, herein authorised and assisted by her husband, William Von Phul, both residents of New Orleans, and Nolan Stewart Williams, a resident of Terre Bonne Parish, Louisiana, respectfully shows, that they, the said Mary McDougald and Nolan Stewart Williams, and their brother, James McCalop Williams, are the only children and sole surviving heirs of the late Alfred Augustus Williams and Catharine Nolan Stewart, who were married in Baton Rouge in 1842.

Petitioners represent that their father, at the date of the said
18 marriage, was in indigent circumstances, but that their mother was at the time thereof the owner of valuable property, which consisted in part of the undivided half of six thousand acres of sugar lands, in the parish of East Baton Rouge, on the Mississippi River, known as the Montésano plantation, and that her fortune was shortly after increased by donations from her father of a number of slaves and other property.

Petitioners represent that their mother's fortune passed into the hands and was under the administration of their father, there being no marriage settlement before, nor settlement of the community of the marriage, and that by judicious management the community had, at the date of their mother's death, in 1854, become very valuable, for from the proceeds of their mother's separate property, administered by their father, he had purchased and paid for the Belleair plantation and negroes, which yielded an annual average of three hundred hogsheads of sugar; and he had also, from the same source, enlarged and worked to a greater advantage their mother's Montésano plantation, and rendered its production capacity equal to an annual average of two hundred and twenty-five hogsheads of sugar, besides the molasses and other crops produced by both plantations.

In addition to this fortune of their mother, her father, Nolan Stewart, who died in 1853, bequeathed to her one-fourth part of the plantation on which he had long resided, and which was known as the Stewart place, and one fourth of the negroes which were attached to it, which produced an annual average of five hundred hogsheads of sugar, besides other crops.

19 Thus it will appear that their mother's separate property, under the judicious management of their father, had produced a large

community property at the time of her death, in 1854; and the revenues of her own separate property, and the revenues coming from estates which he had purchased with the proceeds of their mother's exclusive property, was so vast that it gave to their father credit almost unlimited, and established his fortune so solidly that he did not deem it necessary to settle the succession of their deceased mother in the community, which had existed between them up to the date of her death, in 1854; but he continued to manage her own exclusive property, as well as the community property, as he had previously done; and, using the income from both sources and the credit which the management of this great estate gave him, he purchased the Ardoyne plantation in the parish of Terre Bonne, in 1858, for the price of $210,000, and from all the sources aforesaid their father derived a nett income of $60,000, in 1860.

Petitioners show, that at the time of their mother's death, in 1854, they and their brother James were minors, and entirely ignorant of business affairs, and of their legal rights or the steps necessary to protect them.

Their father was so well assured of his own fortune, and that it was beyond a contingency, that he continued to use and enjoy their own property inherited from their mother, and their interest which
20 they inherited from her in the community, to add to his large fortune; but petitioners further state, in justice to his memory, that although their father failed to comply with the law to secure their rights, his failure to do so was owing to the confidence he had that their rights were in no jeopardy, and that his administration would inure to their ultimate benefit, for by his will, with the exception of a few legacies, he constituted his children the legatees of his entire fortune.

Petitioners show, that one Vernon K. Stevenson, a citizen of Tennessee, who then resided, as they are informed and believe, within what was commonly called the Federal lines, that is to say, when the Federal power was in full reign and sway, previous to the 21st of March, 1862, sent to New Orleans for investment one hundred thousand dollars in what was then called confederate money, meaning thereby notes and bonds issued by a government "so-called" the Confederate States of America—a government composed of an assemblage of so-called sovereign States, who had combined to dissolve the Union, and, as it was mournfully said, to take away the life of the nation.

And petitioners aver that the currency sent by the said Stevenson to invest, and which was invested as hereinafter stated, was illegally issued and for an illegal purpose, one against public policy and against law, and issued by the rebellious subjects of an embyro government to sustain their rebellion against the Government to which they owed allegiance.

Plaintiffs further aver that the issuing, passing, or circulating said currency was illegal, and that all transactions in which said cur-
21 rency entered as a consideration was illegal, null, and void, all of which was well known to the said Stevenson; nevertheless, the said Stevenson did send the illegal currency aforesaid to New Orleans to invest but a short time before; and on or about the 21st of March, 1862, he, through his agent in New Orleans, sent sixty thousand dollars of it to your petitioners' father, the late A. A. Williams, who gave for the same his twelve promissory notes, also dated 21st March, 1862, each for the sum of five thousand dollars, payable to Payne, Huntington and Co., and endorsed by them, bearing interest at 8 per cent. per annum after maturity, each payable three years after the date of.

He also gave three interest-notes of the same date, each for the sum

of $4,800, of the same tenor, but payable in one, two, and three years, and endorsed by the said Payne, Huntington and Co., all of which notes, so made and endorsed, were delivered to the said Vernon K. Stevenson, through his agent, in consideration of his lending, through him to your petitioners' father, the said $60,000 in said confederate currency.

Copies of said notes are hereto annexed as part hereof.

Petitioners charge that the said lending was illegal, null, and void, because the currency lent was illegally issued and circulated, and was an instrument of treason, and the circulation thereof, and the lending of it, tended to the overthrow of the General or United States Government, properly so called.

22 By reason of all of which the said A. A. Williams was not bound to pay the said notes, nor any part thereof, nor were his children, his heirs, executors, or assigns.

Petitioners show that their father died in September, 1863, leaving a will, which is hereto annexed as part hereof, marked A. Their brother, James McGallop Williams, was a minor at the time of their father's death, and did not reach his majority till . But, that he might discharge the duties of executors, he was emancipated, and afterwards he qualified as executor.

Your petitioners were then minors, and not capable of understanding their legal rights or protecting them, and their legal incapacity continued until the marriage of your petitioner, Mary McDougal, in the spring of 1866, and the emancipation of your petitioner, Nolan Stewart, in the fall after.

Petitioners aver that, in the fall of 1865, the said Vernon K. Stevenson sent the said notes to New Orleans for collection. Their brother, James McCalop, hoping that he might be able to work the estate of his father out of debt, inconsiderately entered into an agreement with plaintiff's attorneys, by which, as executor, he agreed to pay the said notes as follows: Plaintiff's attorneys that judgment was expected to be rendered in the case of V. K. Stevenson vs. James McCalop Williams, executor, in favor of plaintiff, for seventy-four thousand dollars, with interests and costs. They then agreed, for a valuable consideration received for account thereof, that the judgment should be collected only to the extent of $69,000, the balance of said judg-

23 ment being then remitted and extinguished; the said judgment for $69,000 to be payable—$3,500 cash; balance in 2, 3, 4, 5, and 6 years, with interests, etc. This agreement was made on the 28th November, 1865. On the 11th January, 1866, the same was accepted, and, by the executor, executed so far as the payment of $3,500.

The three papers, showing the terms on which the settlement was made, are annexed, made a part hereof, numbered 1, 2, and 3.

And your petitioners show that the judgment was not entered in conformity to the said agreement, but was entered for seventy-four thousand dollars absolutely.

True it is that plaintiff's agent gave to the executor a receipt for the $3,500, with a memorandum therein fully showing the plaintiff's obligation and the said executor's rights; but your petitioners aver that the said memorandum should have been incorporated in the judgment.

That the aforesaid exhibits clearly show that the judgment was only to exhibit and indebtedness for $65,000, to be payable in 2, 3, 4, 5, and 6 years, as stated, and that the error, accident, and mistake in so rendering the judgment has been of great injury to your petitioners, the heirs of the said Williams, who are directly interested in the result of the executor's administration.

Now, they aver that this judgment for $74,000, with privelege of lien upon and satisfaction out of the estate and effects, rights and
24 credits, moveable and immoveable, of the estate of the said Augustus A. Williams, has been recorded in several parishes in this State, where the succession owns large landed property; and the effect of the recording of it is disastrous in the extreme, for the said succession is heavily in debts, and it is necessary to sell a large proportion of the immoveable estate to pay those debts, which are exclusive of the nominal debt which appears by the judgment.

Now, the said judgment appearing to be a cash indebtedness of the succession for $74,000, no person can be found who has the means to pay or assume the same.

For these reasons, and for the reason also that the consideration for which these notes were given was illegal, as before stated, the said judgment is null, void, and of no effect.

They allege that they have a legal privilege on all of their father's property, and right to be paid by preference over all others for the amount received by their said father from the community belonging to their mother. They will show this amount on the trial, and they pray that their privelege and priority over all others may be decreed for that amount on their father's property.

They pray that the said V. K. Stevenson and the said James McCalop Williams be cited to answer, and that the said judgment, No. 25978, of the second district court be declared to be null and void, and that the aforesaid notes be declared to be null and void, and that there
25 be judgment ordering the recorder of mortgages in the several parishes where the same is recorded to erase the same, and for costs and general relief.

Plaintiffs annex hereto as part of this petition:

1st. The will of the late A. A. Williams.

2nd. The act of emancipation of Nolan Stewart Williams.

3rd. The authorization of the husband of Mary McDougal Stewart Williams.

4th. The copy of the judgment in the case of V. K. Stevenson vs. Augustus A. Williams.

5th. The copy of the notes on which said judgment was rendered.

6th. The agreements pending the judgment.

(Signed) RANDOLPH, SINGLETON AND HARDEE,
Att'ys for Plaintiff.

Agreements annexed to foregoing petition in the suit of Nolan Stewart Williams and Mary McDougal Williams, wife of William Von Phul, vs. Vernon K. Stevenson.—Filed March 21st, 1867.

VERNON K. STEVENSON
vs.
JAMES MCCALOP WILLIAMS. } District court of New Orleans.

26 Whereas judgment is expected to be rendered herein in favor of plaintiff for seventy-five thousand dollars, with interest and costs: Now this witnesseth that, for a valuable consideration received on account thereof, it is understood and agreed that said judgment shall be collected only to the extent of sixty-nine thousand dollars, the balance of said judgment being hereby remitted and extinguished; the said sum or judgment for sixty-nine thousand dollars to be payable as follows: $3,500 cash, balance in 2, 3, 4, 5, and 6 years, with interest,

payable annually from and after the date of this judgment, and at the rate of eight per cent. per annum.

New Orleans, November 28th, A. D. 1865.

(Signed) HAYS AND ADAMS,
Att'ys for V. K. Stevenson.

The A. A. Williams debt to V. K. Stevenson amounts, with principal and interest, to about $79,800. We will accept, if promptly arranged and undoubtedly secured, the sum of $69,000.00—$3,500.00 cash, balance in 2, 3, 4, 5, and 6 years, with interest-notes, payable annually, for amount of interest on whole sum at 8 per cent. per annum; all the heirs of age to unite in the execution of mortgage, or other security, and consent of other creditors, or such of them as can be seen, to be obtained.

Respectfully,

(Signed) HAYS AND ADAMS,
Att'ys for V. K. Stevenson.

NOVEMBER 4TH, 1865.

27 V. K. STEVENSON
vs.
JAMES MCCALOP WILLIAMS, EXECUTOR. } Second district court, New Orleans.

Received of James McCalop Williams, executor, three thousand five hundred dollars ($3,500.00) on account of judgment rendered in above-entitled cause, with the understanding that the balance due on said judgment, sixty-five thousand five hundred dollars, ($65,500,) shall be payable in 2, 3, 4, 5, and 6 years from the date of said judgment, with interest, payable annually, and at the rate of eight per cent. per annum.

New Orleans, January 11th, 1866.

(Signed) HAYS AND ADAMS,
$3,500. *Att'ys for Plaintiff.*

Authorization of husband annexed to foregoing petition in suit of Nolan Stewart Williams and Mary McDougal Williams, wife of William Von Phul, vs. *Vernon K. Stevenson.—Filed March 21st,* 1867.

NEW ORLEANS, *February 23rd,* 1867.

Messrs. RANDOLPH, SINGLETON and HARDEE, *Att'ys.*

SIRS: I hereby authorize you to institute suit in behalf of my
28 wife, Mary McDougal Williams, to set aside a judgment, and to avoid the effects thereof, obtained by Vernon K. Stevenson against her late father, A. A. Williams, in the second district court of New Orleans.

(Signed) W'M VON PHUL.

Amended petition as offered in note of evidence.—Filed March 12th, 1869.

MARY MCDOUGAL WILLIAMS AND NOLAN STEWART WILLIAMS
vs.
VERNON K. STEVENSON. } No. 28805.

MARY MCDOUGAL WILLIAMS AND NOLAN S. WILLIAMS
vs.
VERNON K. STEVENSON.

In the second district court for the parish of Orleans.

And now comes the plaintiffs in the above-entitled and numbered cause, and, leave of court first had and obtained, file this their amended and supplemental petition, by which they show to the court that the allegation in their original petition filed, to the effect that their late father and natural tutor, Alfred A. Williams, after the death of their mother, purchased and paid for the Belair plantation and negroes, is erroneous in this, that their said father purchased only an inter-
29 est in the plantation after the death of their mother, and that the slaves upon the plantation at the time of said purchase belonged either to the community of acque'ts and gains which existed between said Williams and his wife, or were the separate property of petitioners.

They further shew that, at the time of said purchase of Belair plantation by their father, petitioners were owners of the one undivided half thereof, the same having been donated to them by their great-grandfather, James McCalop, as is shewn by his last will and testament, on file and duly probated and ordered executed in the then sixth district court of the parish of West Baton Rouge.

They shew that the said erroneous allegation in their original petition contained grew out of the difficulty under which plaintiffs' attorney labored at that time in ascertaining the true facts of the case, the plaintiffs themselves not having an accurate knowledge of their own rights.

They further beg leave to amend the allegation in their original petition contained, by which they claimed a preference over all other creditors for the amount received by their father from the community belonging to their mother, so as to now claim a like preference for all amounts received and administered by their said father from their mother's separate estate, as well as from other sources, and belonging to petitioners, and for general relief.

(Signed) RANDOLPH, SINGLETON AND BROWNEE,
Attorneys.

30 *Reasons for judgment.—Filed March 22nd*, 1869.

Second district court for the parish of Orleans.

MARY MCDOUGAL WILLIAMS, WIFE OF WILLIAM VON PHUL,
vs.
SUCCESSION OF A. A. WILLIAMS. } No. 32339.

I have carefully examined the pleadings and evidence in this cause and am satisfied that the case of plaintiff is fully made out. The title in the three children of A. A. Williams to one-half of the Belair plantation, under McCalop's will, is established. The evidence supports all the allegations and charges in plaintiff s' original and amended petitions, and all the charges in the account annexed to and made art of the original petition, except the following:

1st. Under the law the tutor is allowed to retain in his hands, of the revenues of his pupils, the sum of five hundred dollars, above their ordinary expenses, for contingent expenses; upon this amount he is not chargeable with interest; and the account must be altered in this respect.

2nd. The evidence establishes the correctness of the account *and* petitioners as to the number of hogsheads of sugar made upon the

Montesana plantation, the separate property of the minors, from 1835 to 1862 inclusive.

31 Upon the Belair plantation, of which the minors were half owners from 1853 to 1862 inclusive, and upon the Home or Stewart plantation, of which the minors were owners to the extent of one-fourth from 1857 to 1862 inclusive.

But as regards the prices received by the tutor for these sugars, the evidence is of such a nature that it must be referred to experts for examination and analysis to ascertain the amounts to be charged for them during the different years in which said sugars were made and sold by said tutor.

From the nature of the claims of plaintiffs and her co-heirs it must by law have preference over all other claims against the succession.

The next point for consideration is the disposition to be made of the opposition and intervention of Vernon K. Stevenson and others. The records in evidence show that Stevenson obtained a judgment against the testamentary executor of A. A. Williams in 1866, on an agreement previously entered into between the executor and Stevenson.

Subsequently Nolan Stewart Williams and his sister, Mary McDougal Williams, wife of William Von Phul, children of A. A. Williams, brought suit to annul that judgment on these grounds:

1st. The agreement entered into between the testamentary executor and Stevenson was not binding on them, as the beneficiary heirs

32 and creditors of A. A. Williams, and that even if it was binding the judgment did not conform to the agreement.

2nd. That the notes of A. A. Williams, on which the judgment was rendered, were given for a loan of confederate money.

3rd. That the transactions between Williams and Stevenson was null on the ground that they resided one in the Federal and the other in the confederate lines, at the time the transaction was entered into. When the present suit was brought, Stevenson, with N. King Knox and Joseph Cassot, intervened as opponents to plaintiff.

Plaintiff entered an answer to the intervention to the effect that if intervenors had any legal claims, they were of a rank inferior to that of the claim of plaintiff; and to the intervention and demand of Stevenson, she pleaded specially the grounds already set up and pleaded in the direct action of nullity. Stevenson thus joined issue with plaintiff in this suit. Both submitted their respective and conflicting claims to the decision of this court.

The testamentary executor having died, Nolan Stewart Williams was appointed dative testamentary executor. As such he resisted the claim of Stevenson, on the grounds set up in the action of nullity, and rested his own adverse claims as beneficary heir and creditor of A. A. Williams on the same grounds.

By consent of counsel, Stevenson's pretentions, based on his judgment and urged in his intervention in this suit, were met and

33 opposed by the various grounds set up in the action of nullity and the amended petition therein, so that the respective rights of the heirs of Williams and Vernon K. Stevenson are now submitted for adjudication.

I think the heirs of Williams have fully proved and maintained the several grounds set up to annul the judgment. It is clear from the testimony that the consideration was confederate money. Article 127, constitution of 1868, prohibits the courts of this State from enforcing such agreements as this is found to be.

On the remaining ground it is clearly established that Williams was

a citizen of this State, and that Stevenson had for a long time been a citizen of Nashville, Tennessee. Nashville was taken by the Federal forces on the 23rd of February, 1862, and it remained under their domination until the close of the war. New Orleans was under confederate rule until its fall, on the 25th of April, 1862, and between these dates, on the 21 March, 1862, Vernon K. Stevenson sent his confederate currency to A. A. Williams, in New Orleans, for which he gave his notes.

This transaction was not only in violation of the laws of war, but in disobedience of the President's proclamation, in conformity with an act of Congress. (Brightly's Digest, vol. 2, 193, 12 U. S. Digest, 1262.)

(Lawrence Wheaton's International Law, p. 556, sec. 15; the
34 Ainsy Waurch, 2 Black., 673; Hanger vs. Abbott, 6 Wallace, 534; the William Bagley, 5 Wallace, 405; Howard, 498.) As to other points in the petition of intervention, the tutor is not entitled to the usufruct of the individual property of his minor children, except during marriage, (10 La., 92; 12 Rob., 395; 13 Ann., 613; C. C., art's 239, 532;) nor of the community, unless he claims and accepts the usufruct during his life-time, his intention to do so to be signified by his having an inventory taken and giving security as required by law. (C. C. 1986, 1987, C. P. 644; and amendment, 3 Ann., 489, 4 Ann., 394, C. C., 550, 551, 14 Ann., 567, 16 Ann., 49.)

It is, therefore, ordered, adjudged, and decreed that there be judgment in favor of plaintiff, recognizing her rights as set forth in her original and amended petitions, and in the account made part of the original petition, with legal and general mortgage upon all the property of A. A. Williams, her tutor, with preference and privilege over all other creditors, except her co-heirs, for the amounts received by her said tutor on her account, to be ascertained and stated as hereinafter provided.

The plaintiff is further decreed and adjudged to be the owner of the undivided one-sixth of the Belair plantation, situated in the parish of West Baton Rouge, containing 346 acres of land, bounded above by lands of the late Villeneuve plantation, below by lands of Louis Tavrot, and having a front of nineteen arpents on the Mississippi River, with closing lines, so as to give a width of a half arpent in the rear.

35 The entry of said plantation upon the inventory of the succession of A. A. Williams was wrongfully made, and said inventory is annulled to that extent. The one-half of said plantation belonging in their own right to the plaintiff and her co-heirs, Nolan S. Williams, and the heirs of James McCalop Williams, deceased.

It is ordered and decreed that the intervention of N. King Knox and Vernon K. Stevenson be dismissed with costs.

It is further ordered, adjudged, and decreed that there be judgment in favor of Mrs. William Von Phul and Nolan Stewart Williams, and against Vernon K. Stevenson; and that the judgment rendered and signed against the succession of Alfred A. Williams in favor of said Vernon K. Stevenson, on the fifth day of January, 1866, be annulled and reversed; and that the original contract and notes upon which said judgment was rendered be annulled, cancelled, and forever avoided; and that the judicial mortgage resulting from the recording of said judgment in the parishes of East Baton Rouge, West Baton Rouge, and Terre Bonne, be erased and cancelled.

It is ordered and adjudged that the right be reserved to Nolan S. Williams and to the heirs of James McCalop Williams, to assert and claim and prosecute against the succession of A. A. Williams the same rights in full which are herein adjudged to the plaintiff.

It is further ordered, adjudged, and decreed that the account appended

to and made part of the original petition of plaintiff be referred
36 to John A. Dougherty and Henry Jaspar, to be restated upon the following basis. They shall take all the charges in the petitions and account, as they exist now, to be true and established, except the following:

1st. They shall restate the interest account of the tutor, allowing him to hold, free of interest, in his hands each year, over and above the expenses of his minor children, the sum of five hundred dollars.

2nd. They shall restate the account as to the prices to be charged against the tutor for sugars sold by him from the Montesano plantation, from the year 1853 to the year 1862, inclusive, being wholly and entirely the property of his minor children, and, therefore, chargeable against him; for the sugars sold by him from the Belair plantation from the year 1853 to the year 1862, inclusive, belonging to the minors to the extent of half thereof, and one-half of which is, therefore, chargeable against him; for the sugars also sold by him from the Home or Stewart place, from the year 1857 to the year 1862, inclusive, belonging to the minors to the extent of one-fourth thereof, and one-fourth of which is, therefore, chargeable against the tutor.

In restating this branch of the account the said experts shall take the number of hogsheads and pounds of sugar charged in the petition and account as having been received by the tutor to be true and correct, their duty being simply to ascertain the prices.

They shall take it as proved that the quality of the sugar was from fair to fully fair. Where there are in evidence accounts of ac-
37 tual sales of sugars the experts shall be controlled by these. But in those years where there are no accounts of actual sales, they shall be controlled by the price-current newspaper and other papers and documents in evidence.

3rd. The experts shall add to the account the amount of rents proved to have been received by the executor of the succession of A. A. Williams from the individual property of the minors since their father's death, and converted to the use of the succession.

They shall add also to the account the charge made in plaintiff's amended petition, whether these charges have been already herein especially referred to or not.

In all other respects the charges in the petitions and account to remain as they are now; the final decrees to be rendered in accordance with the account so restated, if it shall be approved, and the legal general mortgage then to be made executory.

Judgment.

MARY MCDOUGALD WILLIAMS, WIFE OF William Von Phul,
vs.
SUCCESSION OF A. A. WILLIAMS. } No. 32339.

Second district court, in the parish of Orleans.

38 In the reasons assigned in the written opinion of the court this day delivered and on file—

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, recognizing her rights as set forth in her original and amended petition, with legal and general mortgage upon all the property of A. A. Williams, her tutor, with preference and privilege over

all other creditors, except her co-heirs, for the amount received by her said tutor on her account, to be ascertained and stated as hereinafter provided.

The plaintiff is further decreed and adjudged to be the owner of the undivided one-sixth of the Belair plantation, situated in the parish of West Baton Rouge, containing 346 acres of land; bounded above by lands of the late Villeneuve Le Blanc; below by lands of Louis Favrot; and having a front of nineteen arpents on the Mississippi River, with closing lines, so as to give a width of a half arpent in the rear.

The entry of said plantation upon the inventory of the succession of A. A. Williams was wrongfully made, and said inventory is annulled to that extent.

The one-half of said plantation belonging in their own right to the plaintiff and her co-heirs, Nolan S. Williams, and the heirs of James McCalop Williams, deceased.

It is ordered and decreed that the intervention of N. King Knox and Vernon K. Stevenson be dismissed with costs.

39 It is further ordered, adjudged, and decreed that there be judgment in favor of Mrs. William Von Phul and Nolan Stewart Williams and against Vernon K. Stevenson, and that the judgment rendered and signed against the succession of Alfred A. Williams, in favor of said Vernon K. Stevenson, on the fifth day of January, 1866, be annulled and reversed, and that the original contract and notes upon which said judgment was rendered be annulled, cancelled, and forever avoided; and that the judicial mortgage resulting from the recording of said judgment in the parishes of East Baton Rouge, West Baton Rouge, and Terre Bonne be erased and cancelled.

It is ordered and adjudged that the right be reserved to Nolan S. Williams and to the heirs of James McCalop Williams to assert and claim and prosecute against the succession of Alfred A. Williams the same rights in full which are herein adjudged to the plaintiff.

It is further ordered, adjudged, and decreed that the account appended to, and made part of the original petition of plaintiff, be referred to John A. Dougerty and Henry Jaspar, to be restored upon the following cases. They take all the charges in the petitions and account, as they exist now, to be true and established, except the following:

1st. They shall restate the interest account of the tutor, allow-

40 ing him to hold, free of interest, in his hands each year, over and above the expenses of his minor children, the sum of five hundred dollars.

2d. They shall restate the account as to the prices to be charged against the tutor for sugar sold by him from the Montesano plantation, from the year 1853 to the year 1862, inclusive, being wholly and entirely the property of his minor children, and therefore chargeable against him; for the sugars sold by him from the Belair plantation, from the year 1853 to the year 1862, inclusive, belonging to the minor, to the extent of half thereof, and half of which is therefore chargeable against him; for the sugars also sold by him from the Home or Stewart plantation, from the year 1857 to the year 1862, inclusive, belonging to the minors, to the extent of one-fourth thereof, and one-fourth of which is thereby chargeable against the tutor.

In restating this branch of the account, the said experts shall take the number of hogsheads and pounds of sugar charged in the petitions and account as having been received by the tutor to be true and correct.

Their duty being simply to ascertain the price, they shall take it as proved that the quality of the sugar was from fair to fully fair. Where

there are in evidence accounts of actual sales of sugar the experts shall be controlled by them. But in these years where there are no accounts of actual sales, they shall be controlled by the price-current newspaper and other papers and documents in evidence.

41 The experts shall add to the account the amount of rents proved to have been received by the executor of the succession of A. A. Williams from the individual property of the minors since their father's death, and converted to the use of the succession.

They shall add, also, to the account the charges made in plaintiff's amended petition, whether these charges have been already herein especially referred to or not.

In all other respects, the charges in the petitions and account to remain as they are now, the final decrees to be rendered in accordance with the account so stated, if it shall be approved, and the legal general mortgage then to be made executory.

Judgment rendered March 22nd, 1869.

Judgment signed March 31st, 1869.

(Signed) LOUIS DUVIGNEAUD, *Judge.*

Motion for new trial.—Filed June 4th, 1869.

MRS. MARY McD. WILLIAMS, WIFE OF WILLIAM VON PHUL,
vs.
SUCCESSION OF WILLIAMS, A. A. } No. 32339.

42 Second district court, parish of Orleans.

On motion of Hays and New, and of Campbell, Spofford and Campbell, of counsel for V. K. Stevenson—

It is ordered that plaintiff herein show cause, on Friday the eleventh June, 1869, why the judgment rendered March, 1869, 22nd, should not be set aside and a new trial granted for this:

1st. Said judgment is not sustained by the evidence and is opposed to law.

2nd. Said judgment decrees the nullity of the judgment obtained by V. K. Stevenson, January 5th, 1866, on which there had been a payment January 11th, 1866, of thirty-five hundred dollars, ($3,500.00,) from which an appeal has been taken, but never prosecuted, and which had become final by lapse of time, against which an action of nullity has there pending in the United States district court sitting in New Orleans, instituted by the plaintiff herein, and which had been partially tried, and that such a reversal and nullifying of a judgment in this collateral way is illegal and unwarranted.

3rd. That the decree of this honorable court, going beyond the prayer of the plaintiff herein, decrees the nullity of the notes on which V. K. Stevenson had obtained his judgment.

4th. That the present proceeding, wherein one heir is suing another to obtain a consent judgment in which both are equally interested, is illegal and without force against creditors.

43 That there was no issue presented to this honorable court, either by pleadings or consent of parties, to justify the judgment of nullity against a judgment obtained by V. K. Stevenson three years previously, but the only issue intended by the parties was the amount of the claim of plaintiff herein, and in that issue Nolan S. Williams, exec-

utor, joins V. K. Stevenson, and other creditors, in demanding strict proof from plaintiff of the extent of her claims.

6th. That, with the understanding that the sole question to be decided by this honorable court was the one just stated, V. K. Stevenson made no appearance by counsel, that otherwise he would have done.

Rule for new trial dismissed, as entered on minutes of June 11th, 1869.

Motion of appeal.—Filed June 11th, 1869.

MRS. M. MCD. WILLIAMS, WIFE OF W. Von Phul,
vs.
SUCCESSION OF A. A. WILLIAMS. } No. 32339.

Second district court, in the parish of Orleans.

44 On motion of Hays and New, and Campbell, Spofford and Campbell, of counsel for V. K. Stevenson, and on suggesting to the court that he is informed and believes there is error in the judgments of the court rendered 22nd March, and signed March 31st, 1869, and 15th April, and signed 21st April, 1869, and that he is aggrieved thereby—

It is ordered that an appeal be allowed to the supreme court, returnable on or before the first Monday in November, 1869, at New Orleans, on his furnishing bond with approved surety in the sum of three hundred dollars, conditioned according to law.

Bond of appeal.

THE STATE OF LOUISIANA:

Know all men by these presents that we, V. K. Stevenson and Frank Williams, are held and firmly bound unto the clerk of the second district court, parish of Orleans, his executors, administrators, and assigns, in the sum of three hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated in the city of New Orleans, on this 21st day of June, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-bounden V. K. Stevenson this day filed a motion of appeal from a final judgment rendered against him in the suit of M. McD. Williams, wife of William Von Phul, vs. Succession of
45 A. A. Williams, in the second district court of New Orleans, on the 22, 29, 22, 31 days of March and April:

Now, the condition of the above obligation is such that the above-bound V. K. Stevenson shall prosecute his appeal and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real and personal, if he be cast in the appeal; otherwise that the said Frank Williams, surety, liable in his place.

(Signed) V. K. STEVENSON,
By HAYS AND NEW,
His Attorneys.

(Signed) FRANK WILLIAMS.

Signed, sealed, and delivered in presence of—
(Signed) HARRY HAYS.

Record No. 25978.—*Offered in note of evidence filed March 12th, 1869, being record in suit of Vernon K. Stevenson, vs. James McCaleb Williams, executor of Augustus A. Williams.*

46 State of Louisiana, second district court of New Orleans.

VERNON K. STEVENSON
vs.
JAMES MCCALEB WILLIAMS, EXECUTOR OF AUGUSTUS A. WILLIAMS. } No. 25978.

Petitions and documents transferred from sixth district court of New Orleans to second district court of New Orleans, November 30th, 1865.

Petition.—Filed November 30th, 1865.

To the honorable the judge of the sixth district court of New Orleans:

The petition of Vernon K. Stevenson respectfully represents: That James McCaleb Williams, of the city of New Orleans and State of Louisiana, who is executor of the last will and testament of Augustus A. Williams, late of the parish of East Baton Rouge and State of Louisiana, now deceased, and whose will was probated in the second district court of New Orleans, and State aforesaid, is justly indebted to your
47 petitioner, in his capacity of executor as aforesaid, in the sum of seventy-four thousand dollars, and interest thereon at eight per cent. per annum, for this, to wit, that your petitioner is the holder and owner of fifteen promissory notes, drawn by the said Augustus A. Williams, deceased, in his life-time, all bearing date New Orleans, March 21st, 1865, and all payable at the counting-room or office of Payne, Huntington and Co., and to their order, and by them endorsed, three of which are for the sum of four thousand eight hundred dollars each; one of which is payable one year after date, the second two years after date, and the third three years after date, and the remaining twelve three years after date; all of which said several promissory notes bear interest after maturity at the rate of eight per cent. per annum. All of which will more fully appear by reference to the said fifteen notes hereto annexed and made part of this petition. And the said Augustus A. Williams in his life-time, and the said James McCaleb Williams, executor as aforesaid, being so indebted, promised your petitioner to pay the said sum of seventy-four thousand dollars and interest as aforesaid, when thereunto requested, yet neither the said Augustus A. Williams in his life-time, nor the said James McCaleb Williams, executor as aforesaid, since his death, have paid said several promissory notes, or either of them, or any part thereof, although requested:

48 Wherefore, the premises considered, your petitioner prays that the said James McCaleb Williams, executor of Augustus A. Williams, deceased, be cited to appear and answer this petition, and that, after due and legal proceedings had, there be judgment in favor of your petitioner and against the said James McCaleb Williams, executor as aforesaid, with privilege of lien upon and satisfaction out of the estate, and effects, rights, and credits, moveables and immoveables, of the estate of the said Augustus A. Williams, deceased, in the hands of the said James McCaleb Williams, executor as aforesaid, for the said sum of seventy-four thousand dollars, being the amount of the said fifteen promissory notes, with interest thereon at the rate of eight per cent. per annum as stipu-

lated, and all damages and costs, and for such other and general relief. And, as in duty, etc.

(Signed) HAYS AND ADAMS, *Attorneys.*

Motion to transfer the foregoing proceedings from the sixth district court of New Orleans to the second district court of New Orleans.

Sixth district court of New Orleans.

VERNON K. STEVENSON
vs.
49 JAMES MCCALEB WILLIAMS, EXECUTOR of A. A. Williams deceased.

On motion of Hays and Adams, attorneys for plaintiff, and on suggesting to the court that the succession of Augustus A. Williams, deceased, was opened in the second district court of New Orleans:

It is ordered that the above-entitled suit be transferred to the said second district court of New Orleans.

Service accepted, and rule submitted.

(Signed) GEO. S. LACEY,
Attorney for James McCaleb Williams, Executor.

Answer of James McCaleb Williams.—Filed November 30th, 1865.

VERNON K. STEVENSON
vs.
JAMES MCCALEB WILLIAMS, EXECUTOR OF A. A. Williams, deceased. } No. 25978.

Second district court of New Orleans.

And now comes into court the defendant, James McCaleb Wil-
50 liams, executor of the last will and testament of A. A. Williams, deceased, and for answer to the petition filed and served upon him, he denies each and every allegation in said petition contained.

Wherefore he prays for judgment in his favor, with costs, and for general relief in the premises.

(Signed) GEO. S. LACY, *Attorney.*

Note of evidence and admission.—Filed December 21st, 1865.

VERNON K. STEVENSON
vs.
JAMES MCCALEB WILLIAMS, EXECUTOR OF A. A. Williams, deceased. } No. 25978.

Second district court of New Orleans.

FOR PLAINTIFF:

The signature to the notes admitted. Fifteen notes offered and introduced. The endorsement of Payne, Huntington and Co. also admitted.

Judgment.

51 This came on for trial this day by consent; Hays and Adams for plaintiff; Geo. S. Lacy for defendant; when, the law and evidence considered—

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, Vernon K. Stevenson, and against James McCaleb Williams, executor of the estate of Augustus A. Williams, deceased, with privilege of lien upon, and satisfaction out of, the estate and effects, rights, and credits, moveables and immoveables, of the estate of the said Augustus A. Williams, in the sum of seventy-four thousand dollars, with interest at eight per cent. per annum after maturity of the notes sued on, until paid, and all costs of suit.

Judgment rendered December 21st, 1865.

Judgment signed January 5th, 1866.

(Signed) J. W. THOMAS, *Judge.*

Petition for appeal.—Filed December 20th, 1866.

VERNON K. STEVENSON
vs.
JAMES MCCALEB WILLIAMS, EXECUTOR OF AUGUSTUS A. WILLIAMS. } No. 25978.

52 Second district court of New Orleans.

To the honorable the judge of the second district court of New Orleans:

The petition of Mary Von Phul, residing in this city, and of her husband, William Von Phul, herein aiding and assisting her, and of Abram Kearns, testamentary tutor of Nolan Stewart Williams, the latter and the said Mary Von Phul being heirs of A. A. Williams, deceased, respectfully shews:

That they are aggrieved by the judgment herein rendered, and desire to take a devolutive appeal from said judgment.

Wherefore they pray that said Vernon K. Stevenson be cited to answer hereto, and that the court grant them a devolutive appeal to the supreme court, on execution of bond in an amount to be fixed by the court, said appeal being made returnable on the fourth Monday in January next, and they further pray for all general relief.

(Signed) WHITAKER AND WHITAKER, *Att'ys.*
" MILES TAYLOR, *Attorney.*

Order endorsed on foregoing petition.

Let a devolutive appeal be allowed in this case as within prayed
53 for, and according to law returnable to the supreme court of Louisiana, on the second Monday in February next, (1867) on the appellant giving bond in the sum of two hundred dollars, conditioned as the law directs.

New Orleans, December 22d, 1867.

(Signed) J. W. THOMAS, *Judge.*

Citation of appeal.

The State of Louisiana, second district court of New Orleans, to Mr. Vernon K. Stevenson, greeting:

Whereas Mary Von Phul and her husband, and Abrams Kearns, testamentary tutor, have, on the twentieth day of December, 1866, filed in the office of the second district court of New Orleans, a petition of appeal from a certain final judgment rendered against them, which appeal is returnable in the supreme court for the State aforesaid on the second Monday of February, 1867:

You are therefore hereby cited to appear in person or by attorney in the said court, on the day last aforesaid, to answer said appeal.

Witness the honorable J. W. Thomas, judge of the second district court aforesaid, this twentieth day of December, 1866.

54 (Signed) A. J. VILLERÉ, *Dep'y Clerk.*

Bond of appeal.—Filed with the foregoing petition.

Know all men by these presents, that we, Mary Von Phul and William Von Phul, her husband, and Abram Kearns, testamentary tutor, as principal, and B. M. Howell, as security, are held and firmly bound unto Vernon K. Stevenson, his executors, administrators, and assigns, in the sum of two hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated in the city of New Orleans on this eight' day of November, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas, the above-bounden Mary Von Phul and William Von Phul, her husband, and Abram Kearns, testamentary tutor, this day filed a petition of appeal from a final judgment rendered against James McCaleb Williams, executor, etc., in the suit of V. K. Stevenson vs. James McCaleb Williams, executor, in the second district court of New Orleans, on the twenty-first day of December, 1865:

Now, the condition of the above obligation is such that the above-bound Mary Von Phul, William Von Phul, her husband, and
55 Abram Kearns, tutor, shall prosecute their appeal, and that they shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise, that the same B. M. Howell shall be liable in their place.

(Signed) MARY VON PHUL.
WILLIAM VON PHUL.
ABRAHAM KEARNS, *Tutor.*
pp. J. J. WHITTAKER.
" B. M. HOWELL.

Signed, sealed, and delivered in presence of—
Witness: (Signed) P. BLACHE.

Bond of transfer of proceedings in the aforenamed suit, from the second district court of New Orleans to the circuit court of the United States for the fifth circuit and district of Louisiana.—Filed January 6th, 1868.

Know ye all men by these presents, that we, Vernon K. Stevenson and Frank Williams, of New Orleans, are held and firmly bound unto Williams et als., plaintiffs in suit in second district court of New Orleans, against said Stevenson, in the penal sum of five hundred
56 dollars, to be paid to said plaintiffs, their heirs, executors, administrators, and assigns, for which payment we well and truly bind ourselves, each of us by himself, each of heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated the twenty-third of December, 1867.

Whereas the said Stevenson has presented a petition to the second district court of New Orleans, praying for the removal of said suit to the circuit court of the United States for the fifth circuit and district of Louisiana:

Now, the condition of the above obligation is such, that if the said Stevenson shall file copies of the process against him in said suit, on the first day of the session of said circuit court, then this obligation to be void; otherwise to remain in full force and effect.

(Signed) V. K. STEVENSON,
per pro. D. W. ADAMS,
His Agent & Attorney in fact.
FRANK WILLIAMS.

Petition for transfer of this cause from the supreme court of Louisiana to the circuit court of the United States for the fifth circuit and district of Louisiana.—Filed Dec'r 4th, 1871.

57 To the honorable the judges of the supreme court for the State of Louisiana.

The petition of Vernon K. Stevenson, a citizen of the United States, and of the State of New York, represents:

That he is appellant in this court in a cause lately pending in the second district for the parish of Orleans, and being number 32339 on the docquet of that court, now docquetted in this court, wherein Mrs. Mary McDougal Williams, wife of William Von Phul, is plaintiff, vs. Nolan Stewart Williams, ex'r, and others, including your petitioner, are defendants. Your petitioner states that the amount embraced in that portion of the case in which he is concerned greatly exceeds the sum of five hundred dollars, exclusive of costs, to wit, seventy thousand dollars and upwards. That the said Mary Von Phul, and Nolan Stewart Williams, executor of A. A. Williams, the opposing parties in this part of the cause, are both citizens of the State of Louisiana, and were when the suit was first brought, and during the pendency thereof. The petitioner further states that, from prejudices and local influence, he has reason to believe, and does really believe, he will not be able to obtain justice in the supreme court.

58 And the petitioner herewith tenders to the court good and sufficient surety for his entering, in the circuit court of the United States for the district of Louisiana, to be held in the said district on the first day of its session, copies of all process, pleadings, depositions, testimony and other proceedings in said suit, and doing such other appropriate acts as by the acts of Congress require to be done upon the removal into the United States court.

And hereupon your petitioner prays that under the acts of Congress in this behalf made, and particularly under the act of Congress approved March 2d, 1867, chapter 192, and entitled "An act to amend an act entitled an act for the removal of causes in certain cases from State courts," approved July twenty-seven, 1866, that the necessary measures may be provided whereby your petitioner may be authorized and empowered to remove the cause aforesaid in so far as he is a party to and interested in the same.

(Signed) V. K. STEVENSON.

Subscribed and sworn to before me this 24th day of October, 1871.
(Signed) CHARLES C. JONES, JR.,
Commissioner for Louisiana, resident in New York.

Affidavit of V. K. Stevenson.—Filed with foregoing pet'n Dec'r 4, 1871.

59 STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this twenty fourth day of October, 1871, before me, the undersigned, Charles C. Jones, jr., a commissioner of deeds for the State of Louisiana, resident in the city and county of New York, duly commissioned by executive authority, sworn and empowered to administer oaths and affirmations, take depositions, &c., &c., to be used or recorded in said State of Louisiana, in the judicial courts or otherwise therein, personally appeared V. K. Stevenson, to me well and personally known, and known to me to be the petitioner named in the foregoing petition, who being by me first duly sworn upon the Holy Evangelists, did subscribe, depose, and swear unto the truth of the said foregoing petition.

CHARLES C. JONES, JR., COMMISSIONER OF DEEDS FOR THE STATE OF LOUISIANA.

In testimony whereof I have hereunto set my hand and affixed my official seal, at the said city of New York, the day and year last above-mentioned.

(Signed) CHARLES C. JONES, JR.,
Commissioner for Louisiana, resident in New York.

60 *Bond of transfer of proceedings in the aforementioned cause from the supreme court of Louisiana to the circuit court of the United States for the fifth circuit and district of Louisiana.—Filed Dec'r 4th, 1871.*

Know all men by these presents, that we, Vernon K. Stevenson, of the city, county, and State of New York, and Frank Williams, of New Orleans, are held and firmly bound unto Mrs. Mary McDougal Williams, the wife f William Von Phul, in the sum of one thousand dollars, lawful money of the United States of America, for the true payment of which we bind ourselves, our executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this twenty-fourth day of October, 1871.

The condition of the above obligation is such, that whereas the said Mrs. Mary McDougal Williams, the wife of William Von Phul, has commenced an action against Nolan Stewart Williams, executor, and others, including the said Vernon K. Stevenson, defendant, which suit has not come to a final hearing, trial, and determination, but is now pending in the supreme court of Louisiana; and whereas the said Vernon K. Stevenson is about to file in the said supreme court of
61 Louisiana his affidavit and petition for the removal of the said cause unto the circuit court of the United States for the district of Louisiana, in pursuance of the acts of Congress in such case made and provided, and more particularly under the act of Congress approved the second day of March, 1867, entitled An act to amend an act entitled an act for the removal of causes in certain cases from State courts, approved July 27th, 1866:

Now, should the said Vernon K. Stevenson enter in the said circuit court of the United States for the district of Louisiana, on the first day of its session next after the term of the said supreme court of Louisiana, at which the said affidavit and petition shall be filed and the order for removal made, copies of all process, pleadings, depositions, and other proceedings and testimony in said suit, and do such other appropriate acts as by the said acts of Congress are required to

be done upon the removal of causes as aforesaid unto the United States court, then their obligation to be void; otherwise to remain of full force and virtue.

(Signed) V. K. STEVENSON. [SEAL.]
" FRANK WILLIAMS. [SEAL.]

In presence of—
(Signed) CHARLES C. JONES, JR., as to V. K. Stevenson.

Certificate of Charles C. Jones, jr.—Filed with above bond.

62 CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

Be it remembered that, on this, the 24th day of October, eighteen hundred and seventy-one, before me, the undersigned, a commissioner for Louisiana, resident in New York, duly commissioned by executive authority, sworn and empowered to take acknowledgments of deeds and other instruments in writing to be used and recorded in the State of Louisiana, personally appeared Vernon K. Stevenson, to me well and personally known, and known to me to be one of the parties who executed the foregoing bond or obligation, and acknowledged that he executed the same for the purposes therein named, and that the same is his act and deed.

In testimony whereof I have hereunto set my hand and official seal, the said 24th day of October, eighteen hundred and seventy-one.

(Signed) CHARLES C. JONES, JR.,
Commissioner for Louisiana, Resident in New York.

Motion for removal of cause.—Filed Dec'r 4th, 1871.

The defendant, V. K. Stevenson, submits to the court his petition and his bond, with Frank Williams as surety, for $1,000, and moves
63 the court for the removal of this cause to the circuit court of the U. S., conformably to his petition, in so far as he is a party to the same.

(Signed) J. A. CAMPBELL.

Supreme court of Louisiana.

Opinion and decree.—Filed February 13th, 1872.

MARY MCDOUGAL WILLIAMS, WIFE OF W'M Von Phul, *vs.* SUCCESSION OF A. A. WILLIAMS. } No. 2460.

Appeal from the second district court for the parish of Orleans.

Mr. Justice TALIAFERRO:

Alfred A. Williams died in September, 1863, and his wife in 1854. He became tutor to his three minor children, of whom the plaintiff, now the wife of Von Phul, was one. She sues the estate for $71,571, with five per cent. interest from 1st of March, 1863, being, as she alleges, for property and money derived by inheritance and donations, and which her father, as tutor, received, and never accounted for. She avers that no inventory of her property, when a minor, was ever made by her tutor, and that he failed to present accounts of his administration of

her property. The dative testamentary executor, himself a co-heir with the plaintiff and another to the succession of their common father,
64 admits that the plaintiff has rights and valid claims against the estate; but says the extent and amount of the same are unascertained and unliquidated, and, for the purpose of a legal adjustment thereof, he denies the allegations of the plaintiff's petition, and requires proof.

An intervention was filed by Vernon K. Stevenson, a judgment creditor of the estate, for $74,000; Joseph A. Cassat, for $9,500, by note; and N. King Knox, for a claim of $10,601. They contest the claims of the plaintiff as illegal, and denying that she has a legal mortgage on the property of the estate.

The plaintiff had judgment in her favor in the court below for $88,845.87, with five per cent. interest from 1st of September, 1863, on the sum of $87,012.54, and eight per cent. interest from 12th of August, 1868, on the sum of $1,833.33⅓. The intervention of Stevenson and that of Knox was dismissed; the judgment set up by Stevenson was decreed null and without effect. From this judgment the intervenor Stevenson alone has appealed.

In this court the appellant has filed his affidavit, under the provisions of the act of Congress, approved 2nd March, 1867, entitled "An act to amend an act entitled 'An act for the removal of causes in certain cases from State courts,'" approved July 27th, 1866, he being a citizen
65 of New York. He declares that, "from prejudice and local influence, he has reason to believe, and does really believe, he will not be able to obtain justice in the supreme court." He tenders his bond, with security, as required by the statute referred to, and prays for the removal of this cause, so far as he is a party and interested therein, to the circuit court of the United States for this district.

This court being exclusively appellate in its jurisdiction is confined to the consideration of appeals taken from final judgments rendered by the inferior courts of the State, except in cases of interlocutory decrees calculated to work irreparable injury. The appellant, if the attitude he occupies in this litigation entitles him to the benefit of the act of Congress referred to, having failed to interpose his right to have the cause transferred before the final judgment in the case was rendered by the State tribunal from which he appeals, we think he cannot now invoke the aid of the law of Congress. That act provides for the
66 transfer of causes "at any time before the final hearing or trial of the suit." This right, too, seems to be restricted to cases where a citizen of another State than that in which the suit is brought is either plaintiff or defendant. The appellant in the case before us is neither plaintiff nor defendant. He is an intervenor, voluntarily making himself a party in a suit between citizens of the same State, the result of which *he* could in no wise have affected his rights had he kept aloof from the controversy. He chose to run the chances of obtaining a judgment in his favor in a State court, and failing in that he seeks for better fortune in another tribunal which is incompetent to revise the judgment appealed from and which is without jurisdiction ratione personæ of the original parties to the suit. We conclude therefore that he has no right to claim a transfer of the cause, and his application is therefore refused.

On the merits we find no error in the judgment. The notes on
67 which the appellant's large claim is founded were proved to have been given for a loan of confederate money. It was also established that, at the time the loan was made and the contract entered into,

Stevenson lived in Nashville, Tennessee, then within the Federal lines, and that Williams, who gave the notes, lived in Louisiana. The plaintiff appears to have established with sufficient certainty her claims against the succession, and they were properly allowed.

It is therefore ordered, adjudged, and decreed that the judgment of the district court be affirmed with costs.

Certificate.

I hereby certify the foregoing to contain true and faithful extracts from the record of the proceedings had in the second district court for the parish of Orleans in a certain suit, wherein Mary McDougal Williams, wife of W'm Von Phul was plaintiff, and succession of A. A. Williams was defendant; which record is on the files of this court
68 under No. 2460, and also a true copy of the opinion delivered by this court in said suit.

In testimony whereof I have hereunto set my hand and affixed the seal of this hon. court at the city of New Orleans this fifth day of June, anno Domini eighteen hundred and seventy-two.

[SEAL.] M. P. JULIAN,
Dep'y Clerk Supreme Court, State of La.

69 To the honorable J. P. Bradley, associate justice of the Supreme Court of the U. S.

The petition of Vernon K. Stevenson respectfully shows that he is aggrieved by a judgment rendered against him in the supreme court of the State of Louisiana, in favor of Mrs. M. D. Williams, wife of William Von Phul, who assisted his said wife & was a party to said cause.

Your petitioner shows that the said court determined against a petition which your petitioner made to transfer the said cause from the said court under & by virtue of the terms of an act of Congress passed in 1866, allowing citizens of other States than that in which a suit is pending to remove it when the non-resident citizen could not obtain justice.

Also, against the validity of an agreement which had been made by the petitioner, & which was valid, because of an article of the
70 constitution of the State, which your petitioner alleges to be unconstitutional & void as impairing the obligation of a contract.

Your petitioner further alleges that the said judgment is contrary to the article of the Constitution, which prohibits a State fro' impairing vested rights of property without due process of law.

Your petitioner tenders a bond for five hundred dollars, conditioned according to law, and prays for citation to the said Von Phul & wife.

HAYS & NEW,
Att'ys for V. K. Stevenson.

71 *Order.*

A writ of error is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the United States on the first Monday of December next, the petitioner giving bond in the sum of five hundred dollars, with good and solvent security, conditioned as the law directs.

New Orleans, June 19th, 1872.

JOSEPH P. BRADLEY,
Associate Justice Sup. Court U. S.

(Indorsed:) Vernon K. Stevenson, pl'ff in error, vs. Mrs. Mary McDougal Williams, wife of W'm Von Phul & al., defend'ts in error. Petition & order for writ of error. Filed June 22nd, 1872. M. P. Julian, dep'y cl'k sup. court State of La.

72 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions n the city of New Orleans, Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between Mrs. Mary McDougal Williams, wife of William Von Phul, vs. Succession of A. A. Williams on intervention of Vernon K. Stevenson, appellant, No. 2460 of the docket of said supreme court, a manifest error hath happened, to the great damage of the said Vernon K. Stevenson, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable Salmon P. Chase, chief justice of the said Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. . Vernon K. Stevenson, plaintiff in error, versus Mrs. Mary McDougal Williams, wife of W'm Von Phul & al., defendants in error. Writ of error. Filed June 22nd, 1872. M. P. Julian, dep'y cl'k sup. court State of La.

73 THE UNITED STATES OF AMERICA,
United States Circuit Court, District of Louisiana:

The President of the United States to Mrs. Mary McDougal Williams, wife of William Von Phul, and William Von Phul, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Vernon K. Stevenson is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, this 20th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

74 (Indorsed:) United States circuit court. To W'm Von Phul. No. . Vernon K. Stevenson, plaintiff in error, vs. Mrs. Mary McDougal Williams, wife of W'm Von Phul & al., def'ts in error. Citation.

Marshal's Return.

NEW ORLEANS, *June 22nd*, 1872.

Service accepted for Mary McDougal Williams, wife of William Von Phul, and for William Von Phul, reserving all exceptions and defences.

HIRAM J. GRAUN, *Att'y.*

Filed June 22nd, 1872. M. G. Julian, dep'y cl'k, sup. court.

75 Know all men by these presents, that we, Vernon K. Stevenson, as principal, and John H. New, as surity, are held and firmly bound unto Mrs. Mary McDougal Williams, wife of William Von Phul, and William Von Phul, in the full and just sum of five hundred dollars, to be paid to the said Mrs. Mary McDougal Williams, wife of William Von Phul, and William Von Phul, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 20th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas, lately, at a supreme court of the State of Louisiana, holding sessions in the city of New Orleans, in a suit depending in said supreme court, wherein Vernon K. Stevenson is appellant and the said Mrs. and Mr. Von Phul are appellees, judgment was rendered against the said Vernon K. Stevenson, and the said Vernon K. Stevenson having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mrs. Mary McDougal Williams, wife of W'm Von Phul, & said W'm Von Phul, citing and admonishing them and each of them to be and appear at a Supreme Court of the United States to be holden at Washington, the first Monday of December next.

Now the condition of the above obligation is such, that if the said Vernon K. Stevenson shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

VERNON K. STEVENSON, [L. S.]
By JOHN H. NEW.
JOHN H. NEW. [L. S.]

Sealed and delivered in the presence of—
F. B. VINOT.

76 UNITED STATES OF AMERICA,
District of Louisiana, ss:

Personally appeared John H. New, who, being duly sworn, says that he resides in the city of New Orleans; that he is the surety on the with-

in bond, and is worth the sum of five hundred dollars over and above his debts and liabilities and legal exemptions.

JOHN H. NEW.

Sworn to & subscribed before me on this 20th day of June, 1872, at New Orleans, L'a.

F. B. VINOT,
U. S. Comm'r.

(Indorsed:) United States circuit court. No. . Vernon K. Stevenson, plaintiff in error, vs. Mrs. Mary McD. Williams Von Phul & al., def'ts in error. Bond for writ of error. Filed June 22nd, 1872. M. P. Julian, dep'y clerk sup. court State of L'a. John W. Madden, stationer and printer, 73 Camp st.

(Indorsement on cover:) No. 428. Vernon K. Stevenson, plaintiff in error, vs. Mary McDougal Williams, wife of William Von Phul, and William Von Phul. Louisiana sup. court. Filed 1st October, 1872.

Supreme Court of the United States.

No. 212.

VERNON K. STEVENSON

versus

MARY McDOUGALL WILLIAMS AND HER HUSBAND, WM. VON PHUL.

ERROR TO THE SUPREME COURT OF LOUISIANA.

STATEMENT OF THE PLEADINGS AND FACTS.

This record is singularly confused, and will be understood only by taking the facts in their chronological order.

In this order the first proceeding is a suit by the plaintiff (V. K. S.) in the Sixth District Court of the Parish of Orleans, and afterwards, transferred to the Second District Court.

The plaintiff, in November 1865, sued James M. D. Williams as the executor of the will of his father A. A. Williams, for a debt of $74,000, as shown by fifteen notes, dated 21st March, 1862, and payable one, two, and three years after date to Payue & Harrisson. The executor appeared, the notes were proved, and judgment rendered for the amount the 6th January, 1866. Record 19, 20 21; folio 46 to 52. There was an

agreement signed by the plaintiffs' attorney, that only $69,000 should be collected, and $3500 being paid, the remainder should be paid two, three, four, five and six years, by installments.

Record, 10, 11; folio 26 to 28.

This judgment being in force, the plaintiff, 29th December, 1868, with two other creditors, filed an intervention, as creditors of A. A. Williams, the decedent, in a proceeding pending in that court, to protect their interest. The defendants had commenced a proceeding in that court against the executors of A. A. Williams, their debtor, to establish against the succession a claim for the community interest of the deceased wife of A. A. Williams and also for an account of her paraphernal property. This claim, when established, would create *a mortgage* upon the property of Williams from the time it had accrued, and impair the value of the claims of the creditors of Williams. Such is the code of Louisiana, C. C. arts. 3279, 3284, 3286, 3287. The experience of Louisiana in such cases is, that while the community lasts a husband has a career of prosperity and acquires great estate, which prosperity terminates upon the loss of the wife. It is also noticeable that the property which the dear departed wife brings to the marriage is of very great value, and has been wasted by the improvident and bereaved widower. Also, that the wife is always blessed with liberal relations, who make donations to her during the married life, which her husband seldom manages to advantage, and is called to return to his children as paraphernal estate. The heirship to a deceased mother is always more profitable than that to the father, and the estate of the father, if at all burdened with other debts, is generally absorbed to make good these various claims of his wife's children.

It is not singular that the creditors should have had some disposition to supervise the accounting of the brother and executor of the father, with the sister and her husband for the estate of the mother which had been retained by the decedent, their father. This intervention was made by the petition on page 1 of the record.

The defendants assumed the aggressive by challenging the debt of the plaintiff. Two unpardonable offences were found in the conduct of this plaintiff, for which it behooved the Court to cancel his judgments and the notes on which they were founded. The first of these offences is, that he was living in Nashville, in Tennessee, when the notes were purchased for him in New Orleans. That Nashville was a city of the United States at the date of this transaction, and that New Orleans, at the same date, was a Confederate city. That the respective populations were as Jews and Samaritans—there were no dealings between them, and that it was very wicked for Mr. Stevenson, an alien enemy, even by a commission merchant, to lend Mr. Williams money or to buy his notes. But there was another reason which greatly aggravated his wicked behavior. The money given to Mr. Williams, a good Confederate of Louisiana, and to Messrs. Payne and Harrison, also Confederates, was nothing else than Confederate money, there being nothing of money in New Orleans but this. That this wickedness could not be condoned, that the judgment in 1866, nearly three years old, the liberal deduction, which amounts to the precise difference in the specie value of Confederate money in March, 1862, and United States money in November, 1865, the date of the settlement, and the liberal extension of the term of payment, were all so many aggravating circumstances.

Record, 7, 8, 9, 10, contains a petition or answer, in which these grave accusations against the plaintiff is contained.

The Second District Judge was impressed with the necessity of enforcing the constitution of 1868, (made two years after the judgment,) which prohibited the enforcement of *agreements*, the consideration of which was Confederate money, and that the judgment must be annulled. He also denied to the plaintiff the power to enforce the judgment, for the reason that the notes were purchased for an alien enemy by his agent at New Orleans.

The case was tried as loosely as the record is made up, as will be seen by referring to the testimony, pages 5 and 6.

An appeal was taken to the Supreme Court of the State, and in that Court the proper measures were taken to remove the case to the Circuit Court of the United States, under the act of Congress of 2d March, 1867, (Rec. 23,) on the ground that there was a local prejudice which would prevent a fair administration in his case.

The opinion of the Second District Court is at Rec. page 23, and of the Supreme Court at pages 25 and 26.

ASSIGNMENT OF ERROR.

That a judgment of a court of record made after a trial and the terms of payment extended by an agreement filed in the record, which bears date in the year 1865, from which there was no appeal and the time for appeal had expired, when no action of nullity could be brought against it, could not be annulled under a clause of a State constitution adopted in the year 1868. Nor could the State of Louisiana deprive the plaintiff of the power to maintain and enforce that judgment by such a constitution, and that the decision of the Second District

Court and of the Supreme Court in favor of the defendants are contrary to the articles of the constitution of the United States, which prohibit a State from passing laws to impair the obligation of contracts, and from passing laws to deprive any person of his property, except by due process of law

2d. That the decision of the Second District Court that notes purchased by H. W. Connor and Co., with money or effects in his hands belonging to the plaintiff in March, 1862, and which were afterwards transferred to the plaintiff and were recognized and settled by a judgment in the Second District Court in 1866, cannot be avoided by pleading and proof that Stevenson was, at the date of the purchase, a citizen of Nashville, in Tennessee.

That the laws of the United States, and the international law as maintained by the courts of the United States, do not justify the judgment of the courts of Louisiana.

3d. That the Supreme Court erred in refusing to allow the removal of the cause, upon the petition of the plaintiff, to the Circuit Court of the United States, under the terms of the act of Congress.

4th. That the judgments of the Second District Court and of the Supreme Court, annulling the judgment and notes are, contrary to the constitution and laws of the United States, and aggrieve the plaintiff.

Argument and Authorities.

An appeal from a judgment is limited to the term of one year, if the party claiming the same reside in the State, and to two years if he be an absentee. C. P. 593. The action of nullity, if for reason of fraud, is barred in one year after the fraud has been discovered. C. P. 614. In this case the ground

of the judgments rendered arises out of of the constitution of 1868. The article 127 is: "all agreements, the consideration of which was Confederate money, notes, or bonds, are null and void, and shall not be enforced by the courts of this State." It is a misuse of language to call a judgment an *agreement*. "In the jurisprudence of Louisiana, a judgment is the highest evidence of debt, and the title merges in the judgment. So where judgment is had upon a note, the latter is merged in the former, from which only by its reversal or rescission can it be severed. So, too, a judgment in an action on which a judgment is rendered is merged in the latter. The debtor cannot then plead, against the claim thus merged in the judgment, any prescription but that which bears the latter.

9 La. R. 418; 1 La Ann 372; 3 Ann. 386; 7 Ann 334; 9 Ann. 339; 12 Ann 736; 14 Ann. 205, 231, 261.

A judgment neither creates, adds to, nor detracts from a debt. It declares its existence, fixes its amount, and secures to the creditor the means of enforcing its payment. Thus, judgment on an award confirms it. C. C. 3077-96; 18 La. Rep. 414; 9 Rob. 119.

The authority of res judicata is established by the Civil Code. It is conclusive between the parties in the same manner and for the same reason as at the common law C. C. arts. 2266, 3045, 3049.

Before the convention which framed the constitution of Louisiana could perform a single act, they were required to adopt and did adopt the 14th amendment to the constitution. The prohibitions in reference to this judgment apply. The plaintiff had a property in it, not to be affected by any of the provisions of the State constitution.

2. The evidence shows that the plaintiff, on the 21st March,

1861, had in the hands of the firm of H. W. Conner & Co, the sum of $60,000, collections which they had made from commercial securities, with some cash sent to that firm, which was deposited in one of the banks of the city of New Orleans. This sum this firm was directed to invest. That this firm invested the sum in notes made by A. A. Williams and endorsed by Payne & Huntingdon, giving therefor a check on the bank, which bank and all other banks were dealing with Confederate money. The history is: they had suspended specie payments in September, 1860, and had received Confederate notes as currency after that date, and paid it out as current money. The difference between $74,000 and 69,000, is the difference between the value of Confederate money in New Orleans in March, 1862, and United States treasury notes in November, 1865. Granting that the plaintiff was in Nashville at the time, submissive to the United States, was there a violation of any act of Congress, or any public law in this transaction with which these parties have any connection, or which contaminates any portion of this contract. The court tried this as a trading between enemies. But there was no trading with Stevenson at all; no intercourse nor connection existed between them and Stevenson in the trade. The money was in Conner's hands at Conner's credit in bank, and he transferred it to the endorsers of the notes. When the war ended, he accounted with Stevenson with the notes.

The United States had no interest in confiscating the property of Stevenson at that time. There was no confiscation act at the time in operation, except the acts of 1861, requiring the seizure of property in transit from the States in insurrection and there not in insurrection, or when property was employed for insurrectionary purposes. The general law forbade corres-

pondence and intercourse, independently of the statutes. But here there was no intercouse with Stevenson. We do not understand that the law forbids a person having money or property belonging to an enemy domiciled in the opposing State from employing that money in the manner stated.

Suppose the debtors of A. T. Stewart & Co., in the cases which have been decided in the Supreme Court in their favor, had purchased notes for the account of that firm, and had paid them to A. T. Stewart & Co., without objection, could the makers of those notes have resisted the payment? Suppose A. T. Stewart & Co. had given prior instructions for this disposition of his claims. In this case, it appears Stevenson was an inhabitant of Nashville. Nashville was surrendered the 23d February, 1862. New Orleans had been in very close connections with Nashville prior to the war, and is so at this time, though not so much so as formerly, because of the railway communications that have been completed during and since the war.

Is there any international law that prohibited H. W. Conner & Co., from acting fairly and honestly by a correspondent in Nashville, after that correspondent had fallen under the power of the United States, they remaining members of a Confederate city? This diligent enforcement of what is supposed to be a policy or law of the United States, seems to have been carried to an unwarranted excess in this case.

The law of war is sufficiently hard upon commercial transactions, without any extensive or violent interpretation to make it more rigorous. It is difficult to discover a violation of any duty to the United States by its citizen, the plaintiff in this transaction. Neither can we perceive any claim that the defendants can have arising out of the conduct of H. W. Conner & Co.

They made the purchase, gave their check upon the bank in New Orleans, which the bank honored by paying notes to the defendants. This currency was used by the defendants: at least, it has not been restored.

A judgment was rendered on the notes upon an agreement for a stay of execution and upon a remission of a part of the debt. The heir of Williams could not properly claim a relief from such a judgment for such a cause.

Appeals to the Supreme Court of the State are appeals from the conclusion of the District Court upon the law and the fact. The act of the 2d March, 1867, provides for a removal of *any* cause pending in any State Court, or which may be brought at any time before the final hearing or trial of the suit. This cause was pending in the Supreme Court. The application was made before the final hearing, and the conditions of the law were all complied with. The privilege was given to the non-resident plaintiff or the non-resident defendant. The plaintiff had a right to intervene, and was a party by the intervention. His judgment was assailed in the answer, and thus he became, in effect, a defendant.

It will not be denied that the jurisprudence of the State in reference to the collection of debts has been marked by a good deal of leaning against the holders of claims in the matter of Confederate money, notes given for slave property before emancipation, and in the matter of prescription.

When one comes to reflect upon the vast reach that these adjudications must have had, it is not uncharitable to refer them to a local sentiment or prejudice.

II

2d. The act of Congress of 2d March, 1867, 14 Stat. 558, provides for the removal of a suit between parties like the pres-

ent to the Circuit Court from any court of a State before the final hearing or trial, when there is reason to believe, and the party applying does believe, that local prejudice will prevent a fair administration. The act is univeral in its application to all cases included in the conditions of the act. It applies to every court in the State. The Supreme Court say that the plaintiff was a voluntary intervenor in this suit. But he intervened to protect an interest. His intervention was a separate and distinct suit, connected with the original, but still not the same.

McMullen vs. Gibson, 10 La. Rep. 518; 14 Louis. R. 274; 11 Rob. 326; C. P. 389, 393.

A judgment against the executor in favor of the defendants would have established the debt and the mortgage to the prejudice of the creditors.

The demand of the defendants is to annul the notes and judgment of the plaintiff.

C. P. 376, 377.

III

This court in Delmas vs. Insurance Company, 14 Wall. decided that the article 127 of the Louisiana constitution could have no retroactive operation upon contracts or judgments, nor be invoked to deprive a judgment creditor of the fruit of his judgment, because of the consideration of the original contract being Confederate money.

The decisions of this Court recognize the fact that an alien may have an agent under the precise circumstances of this case. United States vs. Grossmayor, 9 Wall. 72; 7 Wall. 452.

The question comes, whether a contract declared to be illegal under the laws of the United States, by a State couat which those laws do not prohibit, may not be examined by the Su-

preme Court. We understand that under the judiciary act of 1867, the powers of the Supreme Court would embrace the case. The laws of the United States are invoked to defeat this contract, and the plaintiff claims an immunity for his contract upon a just construction of those laws, and that he was not prohibited by them.

The plaintiff was entitled to remove his case under the act of 1867.

The law and the facts both come under the consideration of the Supreme Court of the State on apppeal. The Supreme Court pronounces the judgment on law and fact which the district court should have rendered.

The injustice which the plaintiff has suffered is manifest. Having checks and notes payable in hard dollars, with some Confederate money, he sends them to a respectable commission house for collection and use. The whole amount is converted into Confederate money, we may well suppose, because he could not do otherwise, and is placed on deposit in the bank to the credit of this house. The notes of a planter endorsed by his commission merchant are in the market and purchased by the commission merchant of the plaintiff for his account.

After the war ends, there is a settlement between the plaintiff and his commission merchant, and also with the executor of the maker of the notes; a deduction is made so as to equalize the transaction, and a renewed credit given of a very liberal nature. A judgment is rendered for the debt, subject to this agreement in the Second District Court. At the suit of a collateral claimant three years after, all is annulled and cancelled at his costs.

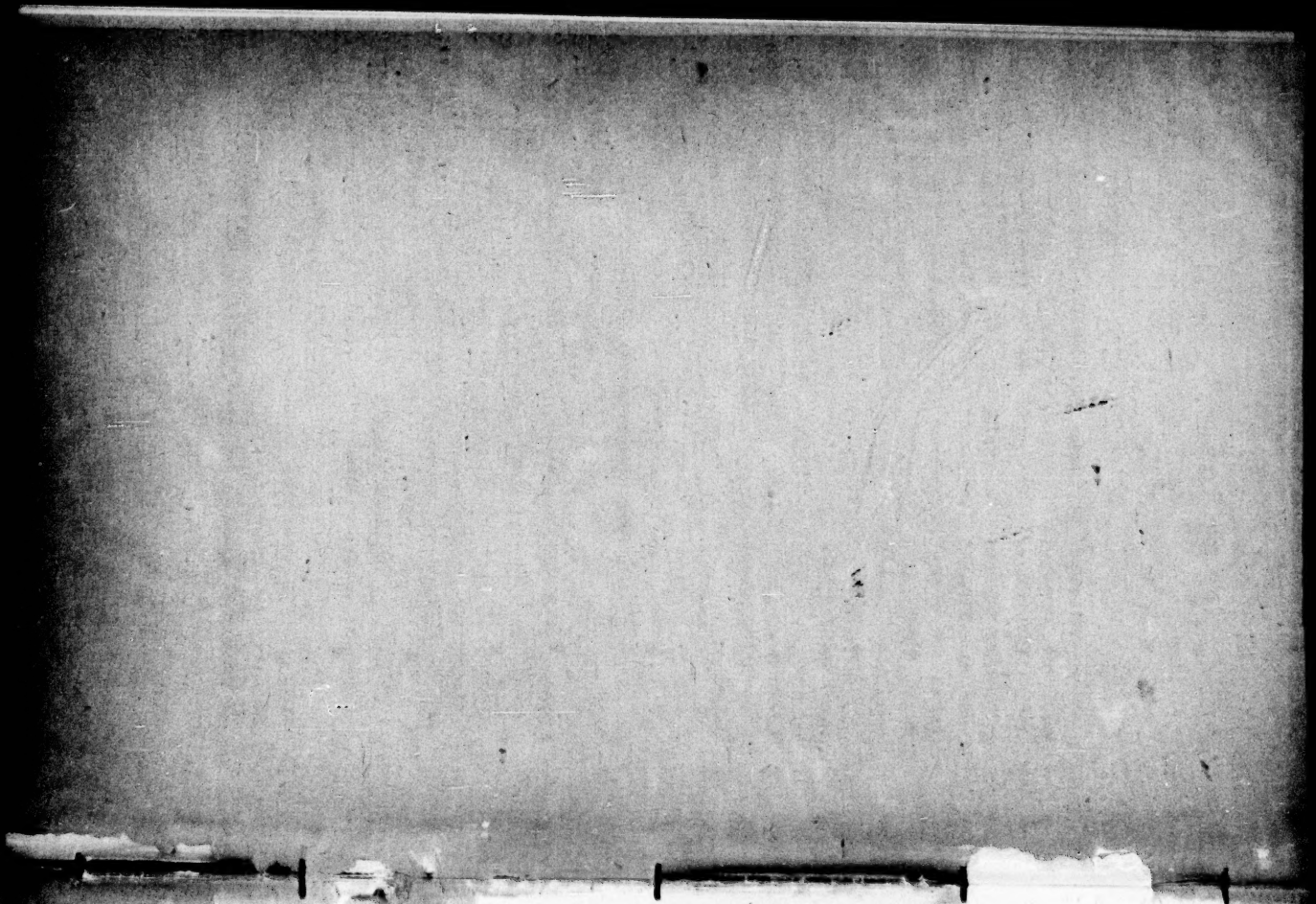
The case bears a likeness to one reported in an ancient book which is asserted to be the veritable book of Jasher, cited in

canonical book of Joshua. It is said in that book, that the inhabitants of the old city of Sodom never allowed a stranger to leave that city before they had despoiled him of all of his goods. It happened that a stranger having an ass of value, richly caparisoned, came into that city, and was entreated by one of its residents to accept his hospitality. The stranger placed under his care his ass, and saddle, and housings, and some of his own apparel. After spending a day or two, he proposed to pursue his journey, and called for his animal and apparel. His Host assured him he had not brought anything of the kind with him. Upon an indignant remonstrance, the Host told him that his excellence had but a dream, that he had nothing of the kind. Upon further remonstrance, his Host told him it was a most favorable dream, and that he would interpret it for him. Upon anger and indignation, the Host informed him that this dream denoted that he would have prosperity, fortune and happiness, and that the vividness of the dream and his assurance of its truth, showed an early acquisition of those things it denoted.

The stranger sought justice in the district court of Sodom. That court determined that the stranger had had a *dream*, that his host had made a favorable interpretation, and that the stranger should pay for this interpretation of the dream and the costs of the judgment. Jasher, chap. 13, 1-30. × 18

This case is not cited in either of the opinions of the Courts as the precedent which was to be followed.

J. A. CAMPBELL,
D. G. CAMPBELL,
for Plaintiff.



Supreme Court of the United States.

VERNON K. STEVENSON,
PLAINTIFF IN ERROR,
vs.
MARY VON PHUL AND HER HUSBAND, DEFENDANTS IN ERROR.

In Error to the Supreme Court of the State of Louisiana.

Brief for Defendants in Error.

STATEMENT OF THE CASE.

Alfred Augustus Williams married Catharine Nolan Stewart in 1842. The wife died in 1854. The husband died in 1863. The issue of the marriage were three children: Mary, (defendant;) Nolan and James, her brothers.

A. A. Williams, when he married, was in indigent circumstances; Miss Stewart, at this time, was the owner of an undivided half of 6,000 acres of sugar lands, and her fortune was shortly after increased by donations from her father of a number of slaves and other property. A. A. Williams administered his wife's property until her death, when it was very valuable. There was no marriage contract; and the community of acquests and gains which existed among them, (Louisiana Code, 1870, article 2399,

et seq.,) though terminating with the wife's death, was never settled by the husband, he having died without performing this his legal duty, as survivor of the community.

By the death of his wife, he became, by operation of law, (Louisiana Code, 1870, article 250, *et seq.*,) the natural tutor of his minor children. It does not appear that he ever *qualified* as such, but died without having rendered any account of his administration as natural tutor.

Louisiana Code, 1870, articles 250–257.

Prior to the 21st March, 1862, Stevenson, the plaintiff in error, loaned $60,000 in Confederate money to A. A. Williams, and took his notes for repayment, at various terms, with eight per cent. *p. a.* interest. He sent the notes to New Orleans for suit against the succession of A. A. Williams, which suit was entered prior to 28th November, 1862. A part payment was made by the dative testamentary executor on the same day, and some sort of compromise or arrangement was entered into between the said Stevenson and the executor, for a diminution of the claim and an extension of the time of payment.

Rec., p. 5.

Although this was but an ordinary debt, on 21st December, 1865, judgment was entered up *with privilege upon the whole succession*, movable and immovable. (Rec. p. 21,) thus putting Stevenson's claim upon the same footing as funeral and burial charges, expenses of last illness, and other privileged debts.

From this judgment an appeal was taken by the present defendants in error to the supreme court of Louisiana, 22d December, 1866. (Rec., p. 21,) but was never prosecuted.

On 21st March, 1867, the children of A. A. Williams,

sue on various grounds for the *nullity* of this judgment thus rendered in favor of Stevenson. (Louisiana Code of Practice, 1870, article 604, *et seq.*) They farther allege their father's indebtedness to them for his management of the community of acquests and gains, for which indebtedness they claim to have a legal privilege on all their father's property over all other creditors. They pray that Stevenson's judgment be declared null and void, and that the recorders of mortgages in the several parishes be ordered to erase the record of said judgment, &c.

Record, pp. 7 to 12 inclusive.

Stevenson made himself a party by filing his intervention and third opposition, requiring full proof from Mrs. Von Phul of the amount of her claim; and that her rights be restricted to the amount which the proofs may show that she is legally entitled to recover.

Rec., pp. 1, 2, 3.

On 22d March, 1869, the case was submitted as to all the parties in interest to the probate court, (second district court of New Orleans,) and a remarkably able judgment rendered by the learned Judge Duvigneaud, (now deceased,) settling the rights of all the contestants. (Rec., pp. 12 to 17.) The judgment of Stevenson was annulled, and the judicial mortgage resulting from the recording of the judgment (Louisiana Code, 1870, article 3322) was ordered to be erased and cancelled.

Stevenson applied for a new trial, which was refused on 11th June, 1869, and he then appealed to the supreme court of Louisiana. (Rec., pp. 17 and 18.) The judgment was affirmed, on appeal, on 13th February, 1872. In this latter tribunal, on 4th December, 1871, Stevenson

filed a petition, as if under the act of March 2, 1867, (14 S. L., 558,) for the removal of the record of appeal from the supreme court of Louisiana to the United States circuit court for the fifth circuit and district of Louisiana. This was refused on the ground that the applicant had slipped his time; had voluntarily made himself a party to the proceedings, and was neither a plaintiff nor defendant.

The opinion of the supreme court is printed in full in the Record, pp. 25, 26, 27, where your Honors will find a brief and lucid statement of the facts of the case. From this judgment of the supreme court of Louisiana the present writ of error is prosecuted.

ASSIGNMENT.

There was no error in the refusal to transfer to the Federal court. The reasons given by the supreme court of Louisiana are, on this point, quite conclusive. The act of Congress (14 S. L., 558) prescribes the time within which the application for removal *must* be made; and this is, "*at any time before the final hearing or trial of the suit.*"

Where a suit is brought in any State court in which there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State, &c., such citizen of another State, whether he be plaintiff or defendant, &c., may, at any time before the final hearing or trial of the suit, file a petition for removal, &c., and when the papers get to the circuit court of the United States, "the suit shall there proceed in the same manner as if it had been brought there by original process."

These expressions, drawn from the language of the act of 1867 itself, indicate clearly the design of Congress that application should be made for removal before judgment.

The final hearing of the suit, spoken of, is in the court where the suit is brought; after judgment there the matter could not be removed to a United States circuit court, so as to enable the latter to proceed in the same manner as if it had been originally there by original process. The debt being merged in the judgment in the State court, the only action in the circuit court would be upon the judgment and record from the State court, and this would not be proceeding with the case as if first instituted in the United States court.

On the second question there is no foundation for any jurisdiction in this court for a writ of error to the supreme court of Louisiana. The notes on which the appellant's (Stevenson's) large claim is founded were proved to have been given for a loan of Confederate money. It was also established that at the time the loan was made and the contract entered into, Stevenson lived in Nashville, Tennessee, then within the Federal lines, and that Williams, who gave the notes, lived in Louisiana. This is all that is said upon this point in the judgment complained of. No allusion is made to any article in the Louisiana constitution. The jurisprudence of Louisiana has settled the principle that when the consideration of a contract was a loan of Confederate notes, the contract was void, as against public morals and good policy.

See Winter *vs.* Jones, 22 La. Annual, pp. 485, and 486, top.

And in such a case this court has frequently decided there is no jurisdiction to review the judgment.

See Bethell *vs.* Demaret, 10 Wallace, 537.

See West Tennessee Bank *vs.* Citizens' Bank, 10 Wallace, 482.

The judgment of the supreme court of Louisiana was based, in addition, on the laws and proclamations of the Congress and Executive, forbidding commercial intercourse between the inhabitants of places under the Federal control and those within the enemy lines.

See Coppell *vs.* Hall, 7 Wallace, p. 542.

The last objection which seems to be urged is, that the judgment of the supreme court of Louisiana violates the article of the constitution in regard to vested rights, if such there be.

None of the questions discussed were raised in the supreme court of Louisiana, except the one which refers to the transfer of the cause to the circuit court of the United States; and if they can be considered here, it is submitted they should be decided adversely to the views of the plaintiff in error.

Respectfully submitted.

DURANT & HORNOR,
for Defendants in Error.